



Stephen B. Selbst
Partner
212.592.1405
: 212.545.2313
sselbst@herrick.com

October 3, 2023

Via Email and ECF

Honorable Martin Glenn
United States Bankruptcy Court
Southern District of New York
One Bowling Green, Courtroom 523
New York, NY 10004-1408

Re: In re Wythe Berry Fee Owner LLC -- Case No. 22-11340 (MG)

Dear Judge Glenn:

We represent Wythe Berry Fee Owner LLC, as debtor and debtor-in-possession (the “Debtor”) in the above-referenced chapter 11 case (the “Chapter 11 Case”). We write to inform the Court of a material development relating to the operation of The William Vale Hotel and the other businesses and tenants at the premises (collectively, the “William Vale Complex”).

As we have previously advised the Court, the Debtor and Mishmeret Trust Company Ltd., in its capacity as trustee (the “Trustee”) of the Series C Bonds (the “Bonds”), have been negotiating for several months with Zelig Weiss concerning a proposed purchase of the William Vale Complex, a transaction that would form the basis for a plan of reorganization.

Although the Debtor believed that it was close to achieving an agreement with Mr. Weiss that would be supported by Mishmeret and the holders of the Bonds, negotiations have reached an impasse. Late in the day on September 29, 2023, Wythe Berry LLC (“Tenant”) delivered a notice of its intention to vacate the William Vale Complex by October 31, 2023.¹ A copy of the letter is attached as Exhibit A.

The notice was delivered pursuant to that certain Stipulation and Order Regarding Cash Collateral (the “Stipulation”) dated August 16, 2023 [ECF No. 166], which permits Tenant to terminate its occupancy of the William Vale Complex and receive a *pro rata* refund of the \$7.5 million Use & Occupancy payment made in August 2023. The Stipulation requires Tenant to cooperate in effecting an orderly transition of the management of the William Vale Complex.

¹ Although Tenant’s delivery of its notice resolves the issue of its continued occupation of the William Vale Complex, the Debtor will continue to prosecute the adversary proceeding pending as Case 23-01012 (MG) for the purpose of determining and recovering the Debtor’s damages against the defendants.

Importantly, the Debtor does not believe this development will impair the William Vale Complex – it has been preparing for this transition and will use LW Hospitality Advisors, an experienced hotel asset manager which is already serving as the Debtor’s hospitality advisor, to oversee management of the William Vale Complex. The Debtor’s goal in this transition is to ensure the smooth and uninterrupted provision of hotel and other services to the guests and tenants at the William Vale Complex.² The Debtor intends to retain all the employees who currently provide services at the William Vale Complex; Mr. Weiss’s senior management team will remain in place. The Debtor also intends to retain all existing third party vendors, leases and subleases. Zelig Weiss has advised the Debtor that he and Tenant will cooperate with the transition.

As a result, the Debtor will now shift its focus to marketing the William Vale Complex with a goal to maximizing its value for the benefit of the estate and all creditors.

The Debtor anticipates that it will be able to provide the Court and parties with further updates during the next month as the transition proceeds. If the Debtor determines that it requires relief from the Court in connection with the transition, it will make appropriate filings with the Court. Given the importance of Tenant’s decision to the value of the Debtor’s asset, the Debtor believes that notifying the Court of these matters promptly was necessary. We are available at the Court’s convenience if the Court determines that a status conference would be helpful.

Respectfully submitted,

/s/ Stephen B. Selbst
Stephen B. Selbst

cc: Nicholas Bassett, Esq
Jon Schuyler Brooks, Esq.
Michael Friedman, Esq.
Elliot Moskowitz, Esq.

² The Debtor will shortly file an application to expand the scope of the authorized services to be performed by LWHA Advisors. See ECF Nos. 82 and 101.

EXHIBIT A

WYTHE BERRY LLC
29 LITTLE NASSAU STREET, SUITE 118
BROOKLYN, NY, UNITED STATES, 11205

September 29, 2023

VIA FEDEX & E-MAIL

Wythe Berry Fee Owner LLC
199 Lee Avenue, #693
Brooklyn, New York 11211
Attn: Asaf Ravid CRO

RE: The William Vale Complex – Early Expiration of Current U&O Period

Dear Mr. Ravid:

On or about August 9, 2023, in the Wythe Berry Fee Owner LLC bankruptcy proceeding, *In re Wythe Berry Fee Owner LLC*, Case No. 22-11340 (MG), Wythe Berry Fee Owner LLC, Wythe Berry LLC, and Mishmeret Trust Company Ltd., entered into that certain Stipulation and Order Regarding Cash Collateral by and among dated August 9, 2023 (the “Stipulation”). On or about August 16, 2023, the Court (Glenn, Ch. J.) signed the Stipulation [ECF No. 166].

Pursuant to the Stipulation, Wythe Berry LLC hereby gives notice to Wythe Berry Fee Owner LLC that it has elected to advance the expiration of the Current U&O Period,¹ from January 31, 2024, to October 31, 2023. Further pursuant to the Stipulation, Wythe Berry LLC demands refund of the *pro rata* portion of the August U&O Payment commensurate with the time period from the date Wythe Berry LLC vacates the WV Complex through January 31, 2024. Given that Wythe Berry LLC anticipates vacating the WV Complex by October 31, 2023 (the Early Vacate Date), the time period from which to calculate the *pro rata* portion will be three months; *i.e.*, one-half the Current U&O Period. Accordingly, Wythe Berry LLC will be entitled to a refund of one-half the \$7.5 million August U&O Payment, an amount equal to \$3,750,000.

Sincerely,

WYTHE BERRY LLC

By:



Zelig Weiss
Managing Member

cc: Janice Goldberg, Esq.
Herrick, Feinstein LLP

Michael Friedman, Esq.
Chapman & Cutler LLP

¹ Capitalized terms not otherwise defined in this letter have the meaning ascribed to them in the Stipulation.